S.B. CIVIL WRIT PETITION NO.3541/1995.

(INDER SINGH VS. STATE & ORS.)

DATE OF ORDER : 21.03.2007.

HON'BLE MR. GOVIND MATHUR, J.

Mr. V.N. Kalla for the petitioner.
Mr. Shyam Ladrecha, AGA, for the respondent/s.

The short question involved in this petition for writ is that whether the appellate authority is having any power under Rule 32 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (for short "the Rules of 1958" hereinafter) to revise or review an order passed by the disciplinary authority, even if an appeal under Rule 23 of the Rules of 1958 is preferred by the delinquent employee.

In brief, facts of the case are that the disciplinary authority i.e. the Superintendent of Police, Udaipur under an order dated 31.12.1993 as a consequent to disciplinary proceedings under Rule 16 of the Rules of 1958, imposed a penalty of recovery of a sum of Rs.150/- per month for a period of two years from the petitioner's pay. Being aggrieved by the order dated 31.12.1993, the petitioner preferred an appeal before Dy. Inspector General of Police, Udaipur Range, Udaipur, that came to be decided under an order dated 14.01.1994 by

setting aside the order dated 31.12.1993, with a direction to pass an order afresh by imposing a major penalty as prescribed at S.No. 1 to 4 under Rule 14 of the Rules of 1958. The disciplinary authority in compliance of the direction given by the appellate authority passed a fresh order dated 18.03.1994 imposing a penalty of making fixation of the petitioner's pay at the minimum of the pay scale prescribed for a period of two years. Being aggrieved by the same, the petitioner preferred an appeal before Dy. Inspector General of Police, Udaipur Range, Udaipur as prescribed under Rule 23 of the Rules of 1958. The appellate authority instead of deciding appeal issued a notice dated 18.03.1994 under Rule 32 of the Rules of 1958 for substituting the penalty of removal from service in place of fixation at the minimum of the pay scale prescribed.

In response to the notice dated 18.04.1994, the petitioner submitted a report to the appellate authority stating therein that he failed to join duties during the period for which he was alleged to remain absent unauthorizedly due to death of his son and sister-in-law. The relevant portion of the representation prescribing reasons for remaining absent from duties reads as follows:

"3-बकाया दिनों के लिये प्रार्थी ने अपने बयान में बताया कि लम्बे समय तक बीमारी में रहा इस दरमियान में मेरे बच्चे की मृत्यु हो गई और विधवा भाभी का भी स्वर्गवास हो गया। इधर वेतन बन्द हो गया। आर्थिक कठिनाई, शारीरिक कमजोरी व बीमारी में मानसिक सन्तुलन खो बैठा जिससे मैं बीमारी की इतला व अवकाश का प्रार्थना पत्र प्रस्तुत नहीं कर सका। इन मजबूरियात के बारे में गांव के मौतबीरान को गवाह में पेश करना चाहता मगर जांच अधिकारी ने न तो बचाव पक्ष के गवाहान की सूची पेश करने का मौका दिया। जब न्यायहित में उन्होंने इसका इतमिनान किया। बल्कि मेरे बयान को स्पष्ट आरोपों को स्पष्ट स्वीकृती मानकर जांच समाप्त कर जांच प्रतिवेदन पेश कर दिया।

4- जांच में किसी गवाह का बयान नहीं हुआ कि मैं एयरफोर्स की ड्यूटी से जानबूझ कर अनुपस्थित हुआ। बीमार होने से हालत खराब हो गई कोई सम्भालने वाला नहीं था मेरे इंचार्ज को बताकर डाईरेक्ट बम्बोरा चला गया था। और 14.5.92 से इलाज प्रारम्भ कराया।"

The appellate authority, by the order dated 15.06.1994 set aside the order dated 16.03.1994 and imposed a penalty of removal upon the petitioner and also to treat the period commencing from 13.05.1992 to 02.11.1993 as the period pertaining to extraordinary leave. The appeal preferred by the petitioner against the order dated15.06.1994 also came to be rejected by the Inspector General of Police (Head

Quarters), Jaipur by an order dated 17.01.1995. Hence, this petition for writ is preferred.

The contention of counsel for the petitioner is that powers under Rule 32 of the Rules of 1952 could have been exercised by the appellate authority only in the event of non-filing of an appeal by delinquent employee, but in the instant matter an appeal was already preferred and that was under consideration.

Heard the counsel for the parties.

Rule 32 of the Rules of 1958 reads as follows:

> "The authority to which an appeal against an order imposing any of the penalties specified in rule 14 lies may, ***if no appeal has been preferred therefrom of its own motion or otherwise***, call for and examine the records of the case in a disciplinary proceeding held by an authority subordinate to it and after making further investigations, if necessary, revise any order passed in such a case and after consultation with the Commission where such consultation is necessary -
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> (a) confirm modify or set aside the order;

(b) impose any penalty or set aside, reduce,confirm or enhance the penalty imposed by the order.

(c) remit the case to the authority which made the order or to any other authority directing such further action or inquiry as it considers proper in the circumstances of the case; or

(d) pass such order as it deems fit :

From a plain reading of Rule 32, it is apparent that the power to revise or review an order passed by the disciplinary authority imposing any of the penalties specified in Rule 14 can be invoked, only if, no appeal has been preferred therefrom. In the instant matter, an appeal was already filed by the petitioner giving challenge to the order passed by the disciplinary authority, therefore, there was no occasion for the appellate authority to invoke the powers prescribed under Rule 32 of the Rules of 1958, as such the initiation of proceedings under Rule 32 of the Rules of 1958 is apparently without jurisdiction.

I am also of the view that the powers under Rule 32 of the Rules of 1958 are required to be exercised by the appellate authority in exceptional circumstances only. In the present matter, after considering the entire evidence available

on record and the report of enquiry officer, the disciplinary authority reached at a specific conclusion at first instance to effect recovery of Rs.150/- per month for a period of two years from the pay of the petitioner, then there was no need to invoke the powers under Rule 32 of the Rules of 1958 and to direct the disciplinary authority to impose a major penalty. As a matter of fact no direction could have been given by the appellate authority to impose a specific penalty or a specific kind of penalty while remanding the matter to pass an order of penalty afresh.

The disciplinary authority possess a broad discretion to impose a penalty upon a delinquent employee by taking into consideration the material available on record and other relevant facts and circumstances. The disciplinary authority after remittance of the mater by the appellate authority to pass an order afresh, considered the evidence available on record and the circumstances in which the petitioner remained absent from duties. On basis of that, a lenient view was taken and a penalty of fixation at the minimum of the pay scale was passed and that could not have been interfered by the appellate authority without reaching at a conclusion that imposition of the penalty by the disciplinary authority was too less to meet the severity of the misconduct or the conclusion was not bonafide. . What appears

from total facts and circumstances of the case is that the petitioner remained absent from duties because certain unavoidable circumstances such as death of his son and sister-in-law and also continuous illness. The disciplinary authority by taking into consideration all these facts imposed a minor penalty and that was not required to be interfered by the appellate authority unless any favouritism or exceptional leniency would have established.

In view of whatever discussed above, this petition for writ deserves acceptance, the same, therefore, is allowed. The orders impugned dated 15.06.1994 passed by the Dy. Inspector General of Police, Udaipur and 17.01.1995 passed by the Director General of Police (Head Quarter), Jaipur are quashed. The order passed by the Superintendent of Police, Udaipur dated 18.03.1994 stands restored. The respondents are directed to reinstate the petitioner with all consequential benefits.

(GOVIND MATHUR)J.

Anil/